



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 26 November 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Remanded Detention Review Decision  
and Periodic Review of Detention of Jakup Krasniqi**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(6), (10) and (12) of Law Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 4 November 2020, further to the confirmation of an indictment ("Confirmation Decision" and "Confirmed Indictment")<sup>2</sup>, Jakup Krasniqi ("Mr Krasniqi" or "Accused") was arrested pursuant to a decision<sup>3</sup> and an arrest warrant issued by the Pre-Trial Judge.<sup>4</sup>
2. On 22 January 2021, the Pre-Trial Judge rejected Mr Krasniqi's application for interim release ("First Detention Decision").<sup>5</sup>
3. On 30 April 2021, the Court of Appeals upheld the First Detention Decision ("First Court of Appeals Decision").<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, public. The Specialist Prosecutor submitted the confirmed indictment in F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public. A confidential further lesser redacted version of the confirmed indictment was submitted on 11 December 2020, F00134, confidential. Subsequent to the Decision on Defects in the Form of the Indictment, a confidential redacted version, F00455/CONF/RED/A01, and a public redacted version, F00455/RED/A01, of the corrected Confirmed Indictment were filed on 8 September 2021.

<sup>3</sup> KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public.

<sup>4</sup> KSC-BC-2020-06, F00027/A07/COR/RED, *Public Redacted Version of Corrected Version of Arrest Warrant for Jakup Krasniqi*, 26 October 2020, public; F00044, Registrar, *Notification of Arrest of Jakup Krasniqi Pursuant to Rule 55(4)*, 4 November 2020, public.

<sup>5</sup> KSC-BC-2020-06, F00180/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Jakup Krasniqi's Application for Interim Release*, 22 January 2021, public.

<sup>6</sup> KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, public.

4. On 25 June 2021, the Pre-Trial Judge ordered Mr Krasniqi's continued detention ("Second Detention Decision").<sup>7</sup>
5. On 21 July 2021, upon the request of the Defence for Mr Krasniqi ("Defence"), the Pre-Trial Judge varied the time limit for the Defence to provide its submissions on whether reasons for continued detention still exist and ordered it to do so no later than ten days after notification of the decision of the Court of Appeals on Mr Krasniqi's pending appeal against the Second Detention Decision ("21 July Order").<sup>8</sup>
6. On 1 October 2021, the Court of Appeals issued the decision on Mr Krasniqi's appeal against the Second Detention Decision ("Second Court of Appeals Decision"),<sup>9</sup> in which it, *inter alia*, remanded the Second Detention Decision to the Pre-Trial Judge for further consideration in order to assess whether the Kosovo Police can effectively enforce the conditions proposed by the Accused or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks.<sup>10</sup>
7. On 8 October 2021, the Pre-Trial Judge ordered the Kosovo Police to provide information regarding: (i) the authority and capability of the Kosovo Police to restrict the movements of individuals subject to conditional release, monitor and restrict such individuals' communications, administer house arrest, and the enforceability of conditions attaching to interim release; and (ii) previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes ("Kosovo Police Order").<sup>11</sup>

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<sup>7</sup> KSC-BC-2020-06, F00371, Pre-Trial Judge, *Decision on Review of Detention of Jakup Krasniqi*, 25 June 2021, confidential. A public redacted version was issued on 30 June 2021, F00371/RED.

<sup>8</sup> KSC-BC-2020-06, Transcript of Hearing, 21 July 2021, public, p. 536, lines 10-23.

<sup>9</sup> KSC-BC-2020-06, IA006/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential. A public redacted version was issued on the same day, IA006/F00005/RED.

<sup>10</sup> Second Court of Appeal Decision, paras 56-58.

<sup>11</sup> KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information*, 8 October 2021, public, with one Annex, confidential.

8. On 8 October 2021, the Pre-Trial Judge ordered the Defence to indicate whether it wishes to: (a) have the detention of Mr Krasniqi reviewed in accordance with the schedule defined in the 21 July Order; (b) have the detention of Mr Krasniqi reviewed together with the Pre-Trial Judge's reconsideration of the Second Detention Decision in light of the directions of the Court of Appeals in one consolidated decision, in which case the schedule set out in the 21 July Order Decision would remain in place – in addition, it was indicated that, should the Parties wish to make observations on the Kosovo Police's submissions, the Specialist Prosecutor's Office ("SPO") was expected to do so within five days of notification of the English translation of said submissions and the Defence within three days of notification of the SPO's observations; or (c) postpone the next review of detention until two months after the Pre-Trial Judge has reconsidered the Second Detention Decision ("8 October 2021 Order").<sup>12</sup>

9. On 13 October 2021, the Defence filed its submissions on the review of Mr Krasniqi's detention and, in response to the 8 October 2021 Order, requested to have Mr Krasniqi's detention reviewed together with the Pre-Trial Judge's reconsideration of the Second Detention Decision in light of the directions of the Court of Appeals in one consolidated decision ("Request").<sup>13</sup>

10. On 13 October 2021, the Pre-Trial Judge ordered the Registrar to provide information on the detention regime applicable to Mr Krasniqi at the Detention Facilities of the Specialist Chambers ("SC") ("Registrar Order").<sup>14</sup>

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<sup>12</sup> KSC-BC-2020-06, F00514, Pre-Trial Judge, *Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention*, 8 October 2021, public.

<sup>13</sup> KSC-BC-2020-06, F00524, Defence for Mr Krasniqi, 13 October 2021, *Krasniqi Defence Observations on Detention Review Timeline and Submissions on Second Detention Review* ("Request"), confidential, paras 18-19.

<sup>14</sup> KSC-BC-2020-06, F00522, Pre-Trial Judge, *Order to the Registrar to Provide Information on the Detention Regime*, 13 October 2021, confidential, para. 7.

11. On 20 October 2021, the Registrar provided the information requested pursuant to the Registrar Order (“Registry Submissions”).<sup>15</sup>

12. On 22 October 2021, the SPO responded to the Request (“Response”).<sup>16</sup>

13. On 26 October 2021, the Kosovo Police provided the information requested pursuant to the Kosovo Police Order (“KP Submissions”).<sup>17</sup>

14. On 1 November 2021, the Defence replied to the Response (“Reply”).<sup>18</sup>

15. On 8 November 2021, the SPO provided observations on the KP Submissions (“SPO Observations”).<sup>19</sup>

16. On 12 November 2021, the Defence replied to the SPO Observations (“Defence Observations”).<sup>20</sup>

## II. SUBMISSIONS

17. The Defence submits that Mr Krasniqi should be released because: (i) conditions can mitigate any identified risks; and (ii) detention has become disproportionate in light of, *inter alia*, the SPO delay.<sup>21</sup> The Defence reiterates its previous submissions that Mr Krasniqi does not pose any of the risks identified in

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<sup>15</sup> KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)*, 20 October 2021, confidential.

<sup>16</sup> KSC-BC-2020-06, F00540, Specialist Prosecutor, *Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 22 October 2021, confidential. A public redacted version was filed on 2 November 2021, F00540/RED.

<sup>17</sup> KSC-BC-2020-06, F00548/eng, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021*, 26 October 2021, confidential. The translation into English of said submission was filed on 3 November 2021.

<sup>18</sup> KSC-BC-2020-06, F00554, Defence for Mr Krasniqi, *Krasniqi Defence Reply to Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 1 November 2021, confidential.

<sup>19</sup> KSC-BC-2020-06, F00562, Specialist Prosecutor, *Prosecution Response to Kosovo Police Submissions on Detention*, 8 November 2021, confidential, with Annex 1, public.

<sup>20</sup> KSC-BC-2020-06, F00568, Defence for Mr Krasniqi, *Krasniqi Defence Observations on Kosovo Police Submissions*, 12 November 2021, confidential.

<sup>21</sup> Request, paras 4, 22, 46.

Article 41(6)(b) of the Law, but states that it will nevertheless provide no further submissions on these risks.<sup>22</sup>

18. The SPO responds that the Request should be rejected.<sup>23</sup> It maintains that the continued detention of Mr Krasniqi remains necessary since there has been no relevant change in circumstances detracting from the established reasons for detention and that the Court of Appeals has rather confirmed that the risks under Article 41(6)(b) of the Law continue to exist.<sup>24</sup> As far as the proportionality of Mr Krasniqi's detention is concerned, the SPO argues that given, *inter alia*, the scope and complexity of the instant case, the continuing expeditious progress in pre-trial milestones, the lengthy custodial sentence, if convicted, and heightened risks of obstruction if released, pre-trial detention continues to be reasonable and proportionate.<sup>25</sup>

19. The Defence replies that the Response fails to conceal the undue delays which have affected the case.<sup>26</sup> In any event, the Defence avers that the SPO's "hyperbolic" assertions over Mr Krasniqi's imagined influence in Kosovo cannot overcome the fact that detention has become disproportionate.<sup>27</sup> The Defence accordingly reiterates its request that Mr Krasniqi be released.<sup>28</sup>

20. In the SPO Observations, the SPO contends that the KP Submissions do nothing to change the previous findings that conditional release is not effectively enforceable given the risks posed by Mr Krasniqi.<sup>29</sup>

21. In the Defence Observations, the Defence avers that it is abundantly clear that any and all conditions imposed by the Pre-Trial Judge, including house arrest,

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<sup>22</sup> Request, para. 21.

<sup>23</sup> Response, para. 42.

<sup>24</sup> Response, para. 1.

<sup>25</sup> Response, para. 41.

<sup>26</sup> Reply, para. 1.

<sup>27</sup> Reply, para. 1.

<sup>28</sup> Reply, paras 1, 18.

<sup>29</sup> SPO Observations, para. 1.

match or exceed the conditions currently applicable in the SC Detention Facilities and can be effectively monitored in Kosovo.<sup>30</sup> Accordingly, Mr Krasniqi should be released.<sup>31</sup>

### III. APPLICABLE LAW

22. Article 41(6) of the Law provides that the Specialist Chambers shall only order the detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC, and there are articulable grounds to believe that the person (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime; or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

23. Article 41(10) of the Law and Rule 57(2) of the Rules provides that, until a judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

24. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

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<sup>30</sup> Defence Observations, para. 1.

<sup>31</sup> Defence Observations, paras 1, 34.



25. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

#### IV. DISCUSSION

##### A. APPLICABLE STANDARD

26. The Defence avers that it is mindful that on a Rule 57(2) detention review, while the Pre-Trial Judge must be satisfied that the grounds for continued detention still exist, he is not required to make findings on matters already decided upon.<sup>32</sup>

27. The SPO responds that the determination whether, pursuant to Rule 57(2) of the Rules, the reasons or circumstances underpinning detention continue to exist under Article 41(6) of the Law inevitably concerns what has changed, if anything, since the previous ruling on detention.<sup>33</sup> The SPO adds that the Pre-Trial Judge should not be expected to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.<sup>34</sup>

28. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether (i) there is a grounded suspicion that the person has committed the crime(s), and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been fulfilled.<sup>35</sup> The duty to determine whether the circumstances

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<sup>32</sup> Request, para. 20.

<sup>33</sup> Response, para. 3.

<sup>34</sup> Response, para. 3.

<sup>35</sup> See, KSC-BC-2020-07, IA002-F00005, Court of Appeals, *Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention ("Haradinaj Detention Appeal")*, 9 February 2021, public, para. 55; F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021, public, para. 17.



underpinning detention still exist imposes on the Pre-Trial Judge the task to, *proprio motu*, assess whether he is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.<sup>36</sup> Although the automatic review every two-months under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred, such a change can nonetheless be determinative and shall be taken into consideration if raised by a Party or *proprio motu*.<sup>37</sup> The Pre-Trial Judge is neither required to make findings on the factors already decided upon in the initial ruling on detention nor to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.<sup>38</sup> What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>39</sup> The SPO bears the burden of establishing that the Accused's detention is necessary.<sup>40</sup>

## B. GROUNDED SUSPICION

29. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a *conditio sine qua non* for the validity of the detained person's continued detention.<sup>41</sup>

30. The Defence has not made submissions regarding this criterion in the Request. In the Response, the SPO avers that the Court of Appeals has confirmed the Pre-Trial Judge's conclusion set forth in the Second Detention Decision that a

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<sup>36</sup> Second Court of Appeals Decision, para. 15.

<sup>37</sup> Second Court of Appeals Decision, para. 16.

<sup>38</sup> *Haradinaj* Detention Appeal, para. 55; Second Court of Appeals Decision, para. 17.

<sup>39</sup> *Haradinaj* Detention Appeal, para. 55.

<sup>40</sup> First Detention Decision, para. 17, with further references; *similarly*, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#) ("*Merabishvili v. Georgia* [GC]"), 28 November 2017, para. 234.

<sup>41</sup> [Merabishvili v. Georgia](#) [GC], para. 222, with further references.

grounded suspicion continues to exist that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC.<sup>42</sup>

31. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Krasniqi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.<sup>43</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.<sup>44</sup> There have been no developments in the case negating these findings.

32. The Pre-Trial Judge, accordingly, finds that there continues to be a grounded suspicion that Mr Krasniqi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

### C. NECESSITY OF DETENTION

33. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.<sup>45</sup> The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>46</sup> that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a

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<sup>42</sup> Response, paras 1, 2, 4.

<sup>43</sup> Confirmation Decision, para. 521(a)(i)-(ii).

<sup>44</sup> See, for example, KSC-BC-2020-04, F00007/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, public, para. 35.

<sup>45</sup> KSC-BC-2020-06, IA001/F00005, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public, paras 18-19; First Detention Decision, para. 18.

<sup>46</sup> See *chapeau* of Article 41(6)(b) of the Law.

future occurrence.<sup>47</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>48</sup> Lastly, when deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>49</sup>

## 1. Risk of Flight

34. The Defence reiterates its previous submissions that Mr Krasniqi does not pose any flight risk.<sup>50</sup> It makes no new submissions regarding this articulable ground.

35. In the Response, the SPO submits that the ever-growing account of the evidence disclosed to Mr Krasniqi, in conjunction with the possibility of a serious sentence in the event of a conviction, may provide the necessary incentive for him to obtain funds and means to travel and eventually evade SC proceedings.<sup>51</sup> It adds that Mr Krasniqi's continued influence in Kosovo, including due to his former functions, establishes that he would have the means to do so.<sup>52</sup>

36. The Defence replies that the SPO's assertions regarding the influence that Mr Krasniqi allegedly has in Kosovo are unpersuasive and improper.<sup>53</sup>

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<sup>47</sup> First Detention Decision, para. 18; *see also* KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

<sup>48</sup> First Court of Appeals Decision, para. 26.

<sup>49</sup> As regards the obligation to consider "alternative measures", *see* KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017*, 26 April 2017, public, para. 114. *See also* ECtHR, *Buzadji v. the Republic of Moldova* [GC] ("*Buzadji v. the Republic of Moldova* [GC]"), no. 23755/07, [Judgment](#), 5 July 2016, para. 87, *in fine*; *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

<sup>50</sup> Request, para. 21.

<sup>51</sup> Response, para. 7.

<sup>52</sup> Response, para. 7.

<sup>53</sup> Reply, paras 1, 5-7.

37. The Pre-Trial Judge recalls that Mr Krasniqi has been made aware of the charges against him and the possibility of a serious sentence in the event of a conviction.<sup>54</sup> Furthermore, it is recalled that Mr Krasniqi continues to play a significant role in Kosovo on the basis of the previous positions he occupied.<sup>55</sup> Hence, there is the risk that the influence he continues to derive from these roles may assist him in evading SC proceedings by, for instance, securing access to relevant information, and obtaining funds and means to travel.

38. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,<sup>56</sup> the Pre-Trial Judge finds that a moderate risk of flight in relation to Mr Krasniqi continues to exist.

## **2. Risk of Obstructing the Progress of SC Proceedings**

39. The Defence reiterates its previous submissions that Mr Krasniqi does not pose any risk of witness interference or obstructing the progress of SC proceedings.<sup>57</sup> It makes no new submissions regarding this articulable ground.

40. The SPO responds that there is a real risk of Mr Krasniqi obstructing the progress of SC proceedings, if he were to be released.<sup>58</sup> According to the SPO, there is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former Kosovo Liberation Army (“KLA”) members and Mr Krasniqi’s overt opposition to KSC [REDACTED] must be placed in such a context.<sup>59</sup> The SPO further asserts that the risk of obstruction is heightened by the Accused’s increasing access to incriminating evidentiary material, as well as

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<sup>54</sup> First Detention Decision, para. 29; Second Detention Decision, para. 29.

<sup>55</sup> First Court of Appeals Decision, para. 52; Second Detention Decision, para. 36; Second Court of Appeals Decision, para. 27.

<sup>56</sup> First Detention Decision, para. 30.

<sup>57</sup> Request, para. 21.

<sup>58</sup> Response, paras 2, 8.

<sup>59</sup> Response, paras 8, 21.

[REDACTED], and that the Court of Appeals has found that the protective measures in place are not sufficient to mitigate the inherently high risk of witness intimidation or interference.<sup>60</sup> It is also of the view that Mr Krasniqi continues to enjoy massive influence in Kosovo over former KLA members and Kosovo in general by virtue of his former functions, as confirmed by the Court of Appeals.<sup>61</sup> In this regard, the SPO avers that Mr Krasniqi has the ability to manipulate government bodies to evade and thwart proceedings against him.<sup>62</sup> It further maintains that the risk of obstruction is further substantiated by Mr Krasniqi's belief that anyone who expresses agreement with the Council of Europe Report should be labelled as "collaborator".<sup>63</sup> Lastly, the SPO avers that, absent any change in circumstances, the finding that Mr Krasniqi [REDACTED] will [REDACTED] obstruct the progress of the SC proceedings, if released, stands.<sup>64</sup>

41. The Defence replies that the assertions that Mr Krasniqi has "massive influence" and the "ability to manipulate government bodies" are unsupported, unpersuasive, improper, highly speculative and hyperbolic. More specifically, the Defence avers that all government bodies are led by newly-appointed persons who have no links with Mr Krasniqi or his party.<sup>65</sup> The Defence further argues that the SPO has repeatedly relied on unsubstantiated and untrue assertions which have been consistently set aside by the Court of Appeals.<sup>66</sup> As such, the new assertions by the SPO are ridiculous and do not rise above the level of mere speculation, showing that the SPO is simply increasing its rhetoric in the hope that its speculative allegations compensate for the lack of evidence justifying Mr Krasniqi's continued detention.<sup>67</sup> Lastly, regarding the four examples of

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<sup>60</sup> Response, paras 8, 11.

<sup>61</sup> Response, paras 12, 20.

<sup>62</sup> Response, para. 12.

<sup>63</sup> Response, para. 21.

<sup>64</sup> Response, para. 22.

<sup>65</sup> Reply, para. 5.

<sup>66</sup> Reply, paras 6-7.

<sup>67</sup> Reply, para. 7.

attempts to obstruct justice relied upon by the SPO, the Defence avers that they have absolutely nothing to do with Mr Krasniqi or the current detention review, as they [REDACTED].<sup>68</sup>

42. At the outset, the Pre-Trial Judge recalls that that he previously found that there is a risk that Mr Krasniqi would obstruct SC proceedings based on, among other things, his position of influence, his public statements criticising the SC, the content of a 24 April 2020 Facebook post targeting “collaborators” and [REDACTED].<sup>69</sup> The Pre-Trial Judge also notes that the Court of Appeals recently upheld that, [REDACTED].<sup>70</sup> The Court of Appeals further found that this factor alone confirms Mr Krasniqi’s [REDACTED].<sup>71</sup>

43. The Pre-Trial Judge further recalls that he previously found that [REDACTED].<sup>72</sup>

44. Furthermore, as a former political leader and former KLA deputy commander, Mr Krasniqi still holds a position of influence in Kosovo.<sup>73</sup> Considering that in the past Mr Krasniqi [REDACTED], this factor, combined with his position of influence, allows for the reasonable conclusion that it is possible<sup>74</sup> for Mr Krasniqi to [REDACTED].<sup>75</sup>

45. Furthermore, the Pre-Trial Judge reiterates that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo, which, even though not determinative in and of itself, provides the context against which Mr Krasniqi’s [REDACTED] and his

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<sup>68</sup> Reply, para. 8.

<sup>69</sup> First Detention Decision, paras 36, 39; Second Detention Decision, para. 35.

<sup>70</sup> [REDACTED].

<sup>71</sup> Second Court of Appeals Decision, para. 30.

<sup>72</sup> [REDACTED].

<sup>73</sup> First Court of Appeals Decision, para. 52; Second Detention Decision, para. 36; Second Court of Appeals Decision, para. 27.

<sup>74</sup> First Court of Appeal Decision, para. 26.

<sup>75</sup> Second Detention Decision, para. 38.

position of influence must be considered.<sup>76</sup> In this regard, the Pre-Trial Judge additionally recalls that this risk need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.<sup>77</sup>

46. Lastly, the Pre-Trial Judge reiterates that the protective measures in place are not entirely sufficient to mitigate the risk of obstruction arising from the preceding findings, considering that, notwithstanding the adoption of additional decisions on protective measures following the Second Detention Decision,<sup>78</sup> [REDACTED] and, irrespective of these measures, [REDACTED].<sup>79</sup> On this basis, the Pre-Trial Judge further concludes that, in view of the fact that Mr Krasniqi [REDACTED] and continues to play a significant role in Kosovo, his increased insight into the evidence underpinning the serious charges against him following the Second Detention Decision increases the risk of obstruction.

47. Accordingly, the Pre-Trial Judge finds that the risk that Mr Krasniqi will obstruct SC proceedings continues to exist.

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<sup>76</sup> First Detention Decision, para. 38; Second Detention Decision, para. 38.

<sup>77</sup> KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 59.

<sup>78</sup> KSC-BC-2020-06, F00373, Pre-Trial Judge, *Sixth Decision on Specialist Prosecutor's Request for Protective Measures*, 25 June 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00373/CONF/RED); F00407, Pre-Trial Judge, *Seventh Decision on Specialist Prosecutor's Request for Protective Measures*, 21 July 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00407/CONF/RED); F00438, Pre-Trial Judge, *Eighth Decision on Specialist Prosecutor's Request for Protective Measures*, 24 August 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00438/CONF/RED); F00466, Pre-Trial Judge, *Ninth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00466/CONF/RED); F00467, Pre-Trial Judge, *Tenth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00467/CONF/RED); F00559, Pre-Trial Judge, *Eleventh Decision on Specialist Prosecutor's Request for Protective Measures*, 5 November 2021, strictly confidential and *ex parte*; F00571, Pre-Trial Judge, *Twelfth Decision on Specialist Prosecutor's Request for Protective Measures*, 17 November 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day).

<sup>79</sup> [REDACTED].



### 3. Risk of Committing Further Crimes

48. The Defence reiterates its previous submissions that Mr Krasniqi does not pose any risk of committing any criminal offence.<sup>80</sup> It makes no new submissions regarding this articulable ground.

49. In the Response, the SPO argues that this risk must be considered in light of: (i) a well-established and ongoing climate of witness intimidation and interference; (ii) the increased awareness of incriminatory evidence the Accused has; and (iii) the significant influential position the Accused still retains in Kosovo.<sup>81</sup> The SPO contends that, considering the prior examples of [REDACTED], this risk remains high.<sup>82</sup>

50. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.<sup>83</sup> It is further recalled that it suffices that Mr Krasniqi instigates or assists others to commit such crimes, or contributes in any other way to their commission; he does not need to physically execute such acts.<sup>84</sup>

51. Turning to the facts under consideration, the Pre-Trial Judge recalls that, besides the climate of witness intimidation, Mr Krasniqi has: (i) [REDACTED]; (ii) a position of influence in Kosovo [REDACTED]; and (iii) an increased account of the SPO's case against him since the Second Detention Decision in view of the ongoing disclosure of material underpinning the serious charges against him.<sup>85</sup>

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<sup>80</sup> Request, para. 21.

<sup>81</sup> Response, para. 23.

<sup>82</sup> Response, para. 23.

<sup>83</sup> First Detention Decision, para. 42; Second Detention Decision, para. 42.

<sup>84</sup> First Detention Decision, para. 42; Second Detention Decision, para. 42.

<sup>85</sup> See paras 42-46 above.

52. On this basis, the Pre-Trial Judge considers that there is a risk that Mr Krasniqi will, under any form of responsibility, commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC.

53. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Krasniqi will commit further crimes continues to exist.

#### **4. Conclusion**

54. The Pre-Trial Judge concludes that there remains a moderate risk that Mr Krasniqi will flee, and that there remains a risk that Mr Krasniqi will obstruct the progress of proceedings, or commit further offences against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

#### **D. CONDITIONAL RELEASE**

##### **1. Submissions**

###### **(a) Request**

55. The Defence submits that any identified risks can be mitigated through the imposition of appropriate conditions.<sup>86</sup> More specifically, Mr Krasniqi proposes the following conditions, which would in his opinion eliminate or very substantially reduce any identified risks: (i) house arrest at a specified address in Kosovo; (ii) preventing Mr Krasniqi from leaving the address except in case of

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<sup>86</sup> Request, para. 23.

emergencies; (iii) monitoring the address constantly either in person or through CCTV; (iv) searching the address for any communication devices before and during his house arrest; (v) monitoring or entirely removing telephones, internet-connected devices and others means of communication (making appropriate provision for privileged communication with Counsel); (vi) restricting the people who are allowed to visit Mr Krasniqi to those on a list pre-approved by the Pre-Trial Judge; (vii) requiring friends and family members who visit Mr Krasniqi to surrender mobile telephones and other communication devices before entering the address; and (viii) reporting any breaches of the above conditions to the court immediately.<sup>87</sup> Mr Krasniqi further remains willing to surrender his passport to the authorities and to undertake not to make any public statements or post on social media in relation to the case or with respect to any details in regards to the court proceedings (“Krasniqi Proposed Conditions”).<sup>88</sup> Lastly, Mr Krasniqi avers that the response of the Kosovo Police to questions posed by the Defence for Kadri Veseli (“Mr Veseli” and “Veseli KP Submissions”)<sup>89</sup> provides firm and detailed evidence that the Kosovo Police have the capability and the capacity to implement these conditions. Accordingly, if conditions can be implemented in respect of Mr Veseli, they could be equally implemented in respect of Mr Krasniqi.<sup>90</sup>

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<sup>87</sup> Response, para. 24.

<sup>88</sup> Request, para. 25.

<sup>89</sup> KSC-BC-2020-06, F00518/COR/A02, Defence for Mr Veseli, *Annex 2 to Corrected Version of Veseli Defence Submissions on Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021)*, 14 October 2021, confidential.

<sup>90</sup> Request, para. 26.

(b) Response

56. The SPO responds that no conditions of release in Kosovo can mitigate the particular risks at issue and, even if they could, Kosovo is unwilling and unable to enforce them.<sup>91</sup> The SPO argues that the Court of Appeals did not reach the question of whether these conditions restrict and monitor communications enough to justify conditional release, instead reasoning that further information is required.<sup>92</sup> The SPO further argues that in analysing the necessary conditions for interim release, regard must be given to the well-recognised climate of witness intimidation in Kosovo – including the interference to date in this case – and the influence the Accused has in Kosovo.<sup>93</sup>

57. The SPO further avers that the Kosovo Police guarantees set out in the Veseli KP Submissions remain insufficient,<sup>94</sup> since: (i) [REDACTED];<sup>95</sup> (ii) [REDACTED];<sup>96</sup> (iii) [REDACTED];<sup>97</sup> and (iv) [REDACTED].<sup>98</sup> The SPO further asserts that the Kosovo Police have failed on three prior occasions to provide sufficient answers regarding the conditions of interim release, which calls into question their understanding of the risks, and their willingness and ability to sufficiently enforce the conditions of release.<sup>99</sup>

(c) SPO Observations

58. In the SPO Observations, the SPO asserts that the conditions proposed are not sufficient and, even if they were, the Kosovo Police cannot effectively enforce

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<sup>91</sup> Response, para. 24.

<sup>92</sup> Response, para. 24.

<sup>93</sup> Response, paras 25, 34.

<sup>94</sup> Response, paras 25, 31.

<sup>95</sup> [REDACTED].

<sup>96</sup> [REDACTED].

<sup>97</sup> [REDACTED].

<sup>98</sup> [REDACTED].

<sup>99</sup> Response, paras 32-33.

them.<sup>100</sup> According to the SPO, the well-established climate of interference with the judicial process in Kosovo is not a historical relic.<sup>101</sup> It adds that [REDACTED].<sup>102</sup>

59. The SPO submits that corruption within Kosovo's criminal justice system is widely recognised.<sup>103</sup> The SPO further avers that [REDACTED].<sup>104</sup>

60. The SPO argues that, on what is now their fourth attempt, the Kosovo Police add no meaningful assurances beyond the ones addressed by the SPO previously, in particular:<sup>105</sup> (i) [REDACTED];<sup>106</sup> (ii) [REDACTED];<sup>107</sup> (iii) [REDACTED];<sup>108</sup> and (iv) [REDACTED].<sup>109</sup>

61. In addition, the SPO contends that the Kosovo Police's failure to demonstrate that they are willing and able to enforce sufficient conditions of release on their fourth attempt is indicative of their inability to effectively deliver what would be required.<sup>110</sup> Furthermore, the SPO argues that prominent figures in the Kosovo Police leadership have connections to the KLA and allegiances to the Accused.<sup>111</sup> The SPO argues that Mr Krasniqi remains enormously influential and releasing him is an "existential threat to this case and the Court".<sup>112</sup>

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<sup>100</sup> SPO Observations, paras 4, 27.

<sup>101</sup> SPO Observations, para. 2.

<sup>102</sup> [REDACTED].

<sup>103</sup> SPO Observations, para. 7.

<sup>104</sup> [REDACTED].

<sup>105</sup> SPO Observations, para. 9.

<sup>106</sup> [REDACTED].

<sup>107</sup> [REDACTED].

<sup>108</sup> [REDACTED].

<sup>109</sup> [REDACTED].

<sup>110</sup> SPO Observations, paras 21-22.

<sup>111</sup> SPO Observations, paras 23-24.

<sup>112</sup> SPO Observations, para. 25.

(d) Defence Observations

62. At the outset, the Defence submits that there is no reason to doubt the guarantees of the Kosovo Police, the latter being legally obliged to co-operate with the SC.<sup>113</sup> In any event, the Defence avers that conditions can mitigate all risks, seeing as the Kosovo Police has expressly confirmed its ability and willingness to enforce any court decisions.<sup>114</sup> The Defence stresses that Mr Krasniqi's personal circumstances must be assessed individually. In that regard considerable weight shall be given to the fact that Mr Krasniqi does not have any connections to any prominent figures in the leadership to the Kosovo Police or any members of the Kosovo Police who have alleged connections to the KLA.<sup>115</sup>

63. Turning to the specific risks, the Defence submits at the outset that the risk of flight can be mitigated by the imposition of conditions, as previously found by the Pre-Trial Judge.<sup>116</sup> With regard to the risk of obstructing SC proceedings, the Defence avers that the conditions capable of being implemented by the Kosovo Police are equal to, and in some respects superior to, the conditions currently being implemented by the Registry, insofar as the Kosovo Police confirmed that it would be able to: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED].<sup>117</sup> Accordingly, the identified risks of using an electronic device belonging to a third party, passing information to a third party and [REDACTED] are duly mitigated by the conditions capable of being implemented by the Kosovo Police,<sup>118</sup> contrary to what the SPO asserts.<sup>119</sup>

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<sup>113</sup> Defence Observations, paras 9-10.

<sup>114</sup> Defence Observations, para. 11.

<sup>115</sup> Defence Observations, paras 12-14.

<sup>116</sup> Defence Observations, para. 17.

<sup>117</sup> [REDACTED].

<sup>118</sup> Defence Observations, para. 22.

<sup>119</sup> Defence Observations, paras 23-25.

64. The Defence further considers the SPO's assertions about the insufficiency and lack of specificity of the KP Submissions as flawed and based on the erroneous assumption that the questions posed by the Pre-Trial Judge were sufficiently exhaustive in nature to prompt the Kosovo Police to cover in its submissions these and other issues.<sup>120</sup> In this regard, the Defence reiterates that the Pre-Trial Judge could clarify and specify different conditions for house arrest.<sup>121</sup>

65. The Defence further adds that the SPO's argument that the prospect of releasing the Accused in Kosovo creates fear and uncertainty amongst witnesses, is directly contradicted by findings in the ICTY *Haradinaj* case finding that generalised fear and uncertainty were not sufficient to deny, in that case, conditional release.<sup>122</sup>

66. As Mr Krasniqi undertook to comply with any interim release conditions and since the elimination of every possible risk is a logical impossibility both in the SC Detention Facilities and on house arrest, detention is no longer necessary.<sup>123</sup>

## 2. Discussion

### (a) Risk of Flight

67. As found in the First and Second Detention Decisions, the risk of flight can be sufficiently mitigated on the basis that Mr Krasniqi has committed himself to return to the SC whenever summonsed, not to change his place of residence and report regularly to the relevant authorities.<sup>124</sup> This conclusion is underscored by the guarantees provided by the Kosovo Police that [REDACTED].<sup>125</sup>

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<sup>120</sup> Defence Observations, para. 26.

<sup>121</sup> Defence Observations, para. 27.

<sup>122</sup> Defence Observations, para. 29.

<sup>123</sup> Defence Observations, paras 30-32.

<sup>124</sup> First Detention Decision, para. 48; Second Detention Decision, para. 49.

<sup>125</sup> [REDACTED].



(b) Risks of Obstruction and Committing further Crimes

68. At the outset, the Pre-Trial Judge notes that the Court of Appeals determined that, while the list of conditions proposed by the Defence in relation to the Second Detention Decision was detailed and may, in the abstract, restrict and monitor his communications, it remains to be assessed whether such measures can be effectively enforced by the Kosovo Police.<sup>126</sup> Accordingly, the Pre-Trial Judge will, on the basis of the information contained in the KP Submissions and the Veseli KP Submissions, assess whether: (i) these conditions sufficiently mitigate these risks; and (ii) the Kosovo Police have the capacity to effectively implement the conditions under consideration in view of the risks that Mr Krasniqi will obstruct SC proceedings and/or commit further crimes.

(i) Monitoring Communications with Family Members and Pre-Approved Visitors

69. The Kosovo Police indicate that, [REDACTED].<sup>127</sup> Furthermore, the Kosovo Police are prepared to [REDACTED].<sup>128</sup> At the same time, the Kosovo Police specify that [REDACTED].<sup>129</sup>

70. As regards communications with family members in particular, this means that [REDACTED]. In addition, Mr Krasniqi could use coded or obscure language that, [REDACTED]. Therefore, the conditions do not address the possibility that, [REDACTED], Mr Krasniqi could ask a family member to pass on a message orally or to use a device belonging to a third person to do so,<sup>130</sup> or that he could transmit covert messages for the purposes of obstructing SC proceedings or committing further crimes. Such considerations apply similarly for monitored visits with pre-

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<sup>126</sup> Second Court of Appeals Decision, paras 54-59.

<sup>127</sup> [REDACTED].

<sup>128</sup> [REDACTED].

<sup>129</sup> [REDACTED].

<sup>130</sup> Second Detention Decision, para. 48.

approved visitors, notably the possibility of using coded or obscure language [REDACTED].

71. By contrast, at the SC Detention Facilities, unmonitored communications are strictly limited considering that detainees are only allowed unmonitored “private visits” for certain close family members and within limited time periods.<sup>131</sup> In addition, in person and video visits are, as a rule, conducted within the sight and general hearing of SC Detention Officers.<sup>132</sup> The Registrar may also impose additional safeguards for such visits, including active monitoring and after-the-fact-listening.<sup>133</sup> This allows for visits to be reviewed subsequently, while an actively monitored visit may be terminated immediately in order to, for example, prevent the unauthorised disclosure of confidential information or, if it is perceived that a detainee is using coded language, interference with the safe and secure conduct of proceedings.<sup>134</sup>

72. Furthermore, under Article 34(8) and (12) of the Law, the SC Registry is responsible for managing and administering the detention function and facilities for the SC, as well as [REDACTED].<sup>135</sup> Thus, the Registry is in the unique position of managing and administering the SC Detention Facilities [REDACTED]. [REDACTED].<sup>136</sup>

73. It is also significant that, unlike Mr Krasniqi’s private residence, the SC Detention Facilities are a high-security environment.<sup>137</sup> Most significantly, the

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<sup>131</sup> KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, public, footnote 95.

<sup>132</sup> Registry Submissions, para. 31; KSC-BC-2020-06, IA007/F00005/RED, Court of Appeals, *Decision on Rexhep Selimi’s Appeal against Decision on Review of Detention*, 1 October 2021, public, para. 53, footnote 125.

<sup>133</sup> Registry Submissions, para. 32.

<sup>134</sup> Registry Submissions, paras 32-33.

<sup>135</sup> [REDACTED].

<sup>136</sup> [REDACTED].

<sup>137</sup> Registry Submissions, para. 43.

SC Detention Officers are highly qualified, [REDACTED], and receive training on applying the visits and communications regime at the SC Detention Facilities.<sup>138</sup>

74. The Kosovo Police [REDACTED]. Furthermore, in the view of the Pre-Trial Judge, it is decisive that, [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. The Pre-Trial Judge has reached this conclusion on the basis that: (i) [REDACTED]; (ii) [REDACTED];<sup>139</sup> and (iii) [REDACTED].

75. [REDACTED].<sup>140</sup> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

76. Furthermore, the fact that Kosovo Police officers are, as highlighted by the Defence,<sup>141</sup> fluent in Mr Krasniqi's native language and may be familiar with the general context in Kosovo is insufficient to ensure the effective monitoring of visits and communications given that, [REDACTED].

77. In conclusion, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.<sup>142</sup> In the view of the Pre-Trial Judge, the Kosovo Police have not provided guarantees establishing that they have the capacity to implement corresponding measures that sufficiently minimise the existing risks.

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<sup>138</sup> [REDACTED].

<sup>139</sup> [REDACTED].

<sup>140</sup> [REDACTED].

<sup>141</sup> Defence Observations, para. 22 (b).

<sup>142</sup> Similarly, KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, public ("*Thaçi Detention Appeal*"), para. 68.

(ii) Contextual Considerations

78. [REDACTED].<sup>143</sup> In addition, despite the Pre-Trial Judge's request to liaise with any other entity in Kosovo,<sup>144</sup> [REDACTED].<sup>145</sup> [REDACTED].<sup>146</sup>

79. Therefore, the Pre-Trial Judge is of the view that it has been insufficiently demonstrated that the Kosovo Police have established and recognised experience in enforcing the conditional release of individuals accused of serious crimes (who occupy or have previously occupied high-ranking positions).

80. Lastly, the Pre-Trial Judge recalls that the very reason for establishing the SC was that criminal proceedings against (high-ranking) former KLA members could not be conducted in Kosovo.<sup>147</sup> As a result, these proceedings were relocated away from Kosovo,<sup>148</sup> and the procedural framework and operational practice of the SC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims and others at risk with a view to implementing

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<sup>143</sup> [REDACTED].

<sup>144</sup> Kosovo Police Order, para. 9.

<sup>145</sup> [REDACTED].

<sup>146</sup> [REDACTED].

<sup>147</sup> Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report: Inhumane treatment of people and illicit trafficking in human organs in Kosovo*, Doc. 12462, 7 January 2011, para. 10.

<sup>148</sup> Law No. 04/L-274, pp. 8-9 ("If the SITF investigation culminates in an indictment and trial proceedings, an environment conducive to the proper administration of justice should be provided. Accordingly, a specialist court within the Kosovo court system and a specialist prosecutor's office would be used for any trial and appellate proceedings arising from the SITF investigation. This court would have a seat in Kosovo, but sensitive proceedings, including hearing of witnesses, would take place outside of the country in view of the nature of the allegations"); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, 15 February 2016, preamble ("Referring to the exchange of letters between the President of the Republic of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy dated 14 April 2014, ratified by Kosovo Law No. 04/L-274 of 15 May 2014, containing the commitment of the Republic of Kosovo to establish Specialist Chambers and a Specialist Prosecutor's Office within the Kosovo judicial system to be used for trial and appellate proceedings arising from the investigation of the Special Investigative Task Force of the Special Prosecution Office of the Republic of Kosovo related to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 and which may be relocated to a third State subject to the conclusion of a Host State Agreement with the Host State"), article 3 ("The Kosovo Relocated Specialist Judicial Institution shall have a seat in the Host State").

the mandate of the SC. Moreover, as mentioned, there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo.<sup>149</sup> In addition, the Pre-Trial Judge further notes that various international organisations have recently documented that corruption continues to affect the criminal justice sector in Kosovo.<sup>150</sup>

81. The Pre-Trial Judge considers that the aforementioned considerations are, as such, not determinative of the matter under discussion. However, the assessment of the conditions of house arrest to be enforced by the Kosovo Police cannot be divorced from the context in which the house arrest would take place insofar as it affects the conduct of the proceedings before the SC. On this basis, the Pre-Trial Judge finds that, in view of the compelling indications set out above, the context in which the house arrest would take place strengthens the finding that the proposed measures would not adequately mitigate the risks of obstruction and/or further crimes being committed in relation to Mr Krasniqi specifically.

(iii) Additional Measures

82. The Pre-Trial Judge is mindful of the fact that the Kosovo Police undertake, in general, to ensure the strict enforcement of any SC decisions.<sup>151</sup> However, this undertaking does not, in and of itself, provide a sufficient basis for the Pre-Trial Judge to *proprio motu* order any additional measures to mitigate the identified risks. In view of the Pre-Trial Judge's order to provide specific information to a list of detailed questions and to add any other relevant information (in particular as to any additional measures that the Kosovo Police would implement),<sup>152</sup> such a

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<sup>149</sup> See para. 45 above.

<sup>150</sup> United Nations Interim Administration Mission in Kosovo, *Report of the Secretary-General*, U.N.Doc. S/2020/964, 1 October 2020, para. 30; European Union Rule of Law Mission, *Justice Monitoring Report*, October 2020, p. 21; European Commission, *Kosovo Report 2021*, 19 October 2021, pp. 23, 25.

<sup>151</sup> Veseli KP Submissions, p. 8; KP Submissions, pp. 1-2; Request, paras 29-30; Reply, para. 12; Defence Observations, paras 31-34.

<sup>152</sup> Kosovo Police Order, para. 8; Annex to Kosovo Police Order, para. 12.

general undertaking does not, as such, amount to an acceptance that any measures ordered by the Pre-Trial Judge will be adequately implemented, let alone a guarantee that the fundamental concerns about illicit communications, as elaborated above, can be mitigated.

83. Lastly, the Pre-Trial Judge finds that there is no basis to request any further information from the Kosovo Police. The Kosovo Police have been approached on three separate occasions and the Pre-Trial Judge has formulated a detailed list of questions, which also left room for the Kosovo Police to provide any additional information considered to be relevant for the present determination. Therefore, the Kosovo Police have had ample opportunity to provide the required information and any additional information would not assist the Pre-Trial Judge any further in relation to this matter.

84. Accordingly, the Pre-Trial Judge finds that no additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.

#### (iv) Conclusion

85. Accordingly, the Pre-Trial Judge concludes that, even with the benefit of the KP Submissions and the Veseli KP Submissions, the conditions proposed remain insufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law in relation to Mr Krasniqi and, in addition, any additional conditions imposed by the Pre-Trial Judge would not affect this conclusion. It follows that, as argued before, Mr Krasniqi's communications can only be effectively restricted and monitored in a way to sufficiently mitigate the risks of him obstructing SC proceedings or committing further crimes through the monitoring framework at the SC Detention Facilities. Having assessed and weighed the Parties' submissions in their entirety, the Pre-Trial Judge considers that the preceding considerations continue to be decisive in adopting this conclusion and, as a result, it is not necessary to further address the Parties' remaining arguments for the present

purposes – without any prejudice as to the outcome of any assessment of such arguments.

86. Therefore, having assessed the Second Detention Decision to the extent that it was remanded by the Court of Appeals in accordance with the Second Court of Appeals Decision, the Pre-Trial Judge confirms the Second Detention Decision. By the same token, the aforementioned conclusion applies, for the same reasons, to the current periodic review of Mr Krasniqi's detention arising from Article 41(6), (10) and (12) of the Law and Rule 57(2) of the Rules.

## E. PROPORTIONALITY OF DETENTION

### 1. Submissions

87. The Defence submits at the outset that the length of time spent in detention pending trial is a factor that needs to be considered along with the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.<sup>153</sup> Moreover, it recalls that Rule 56(2) of the Rules imposes on the Pre-Trial Judge an obligation to ensure that Mr Krasniqi is not detained for an unreasonable period prior to the opening of the case and that he be released in case of undue delay caused by the SPO.<sup>154</sup>

88. In this regard, the Defence submits that the period of pre-trial detention suffered by Mr Krasniqi is disproportionate<sup>155</sup> by reason of: (i) the fact that he has been detained for over 11 months already;<sup>156</sup> (ii) [REDACTED];<sup>157</sup> and (iii) the

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<sup>153</sup> Request, para. 28.

<sup>154</sup> Request, para. 28.

<sup>155</sup> Request, para. 45.

<sup>156</sup> Request, para. 29

<sup>157</sup> [REDACTED].



delay on the part of the SPO which has extended the pre-trial process and thus the period of Mr Krasniqi's detention.<sup>158</sup>

89. With specific regard to the delay caused by the SPO, the Defence avers that: (i) there has been a delay of at least five months in the preparation of the Pre-Trial Brief;<sup>159</sup> (ii) it is now more than four months after the initial deadline for Rule 102(1)(b) disclosure expired and the SPO has still not completed it;<sup>160</sup> (iii) it will be almost six months after the initial deadline before the SPO provides the Defence with the complete and properly particularised Rule 102(3) Notice and completion of the actual disclosure remains distant;<sup>161</sup> (iv) disclosure of Rule 103 is not complete and no time-limit has been set for that;<sup>162</sup> (v) the SPO has applied for extensions of time on seven separate occasions;<sup>163</sup> and (vi) the SPO has not been able to commit to even a timeline or an estimated date for completing its outstanding investigations.<sup>164</sup> All these undue delays have, in the Defence's view, a direct and substantial impact on the proportionality of Mr Krasniqi's detention.<sup>165</sup> Even admitting the difficulties stemming from the size of the case and ongoing pandemic, the Defence avers that the SPO was aware of such challenges when it chose to seek the arrest and detention of Mr Krasniqi.<sup>166</sup> As the transmission of the case for trial is not likely to happen in the foreseeable future, the Defence invites the Pre-Trial Judge to conclude that there has been an undue delay, which has necessarily postponed the start of trial and thus prolonged Mr Krasniqi's detention, rendering it disproportionate.<sup>167</sup>

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<sup>158</sup> Request, paras 31-44.

<sup>159</sup> Request, para. 32.

<sup>160</sup> Request, paras 33-34.

<sup>161</sup> Request, paras 35-38.

<sup>162</sup> Request, para. 39.

<sup>163</sup> Request, para. 40.

<sup>164</sup> Request, para. 41.

<sup>165</sup> Request, para. 42.

<sup>166</sup> Request, para. 43.

<sup>167</sup> Request, paras 44-45.

90. The SPO responds that continued detention is proportionate.<sup>168</sup> In its view, estimates, past or present, are not determinative of the proportionality of the pre-trial detention's length, and have not been the basis for prior findings by either the Pre-Trial Judge or the Court of Appeals.<sup>169</sup> Moreover, the SPO avers that the case has further actively progressed towards trial, with the SPO indicating 17 December 2021 as a date to file its Pre-Trial Brief, the SPO's completion of the vast majority of Rule 102(1)(b) disclosure, the Parties' filing of appeals in relation to preliminary motions, and the filing of a preliminary witness list on 22 October 2021.<sup>170</sup> It adds that, as all necessary pre-trial processes in the case are advancing, the Defence's suggestion that the justified extensions for disclosure of a relatively small number of remaining Rule 102(1)(b) materials has either delayed the start of trial or prolonged the detention of the Accused is without merit.<sup>171</sup>

91. The Defence replies that the SPO deliberately tackled only one out of the six discrete issues identified by it, namely disclosure of Rule 102(1)(b) material.<sup>172</sup> In any case, even with regard to Rule 102(1)(b) disclosure, the Defence avers that events that unfolded since the Response demonstrate undue delay by the SPO.<sup>173</sup> Accordingly, and having also regard to the case-law of the European Court of Human Rights, the Defence reiterates that there has been undue delay by the SPO which shall lead to interim release pursuant to Rule 56(2) of the Rules.<sup>174</sup>

## 2. Discussion

92. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention – as

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<sup>168</sup> Response, paras 36, 41.

<sup>169</sup> Response, para. 38.

<sup>170</sup> Response, para. 39.

<sup>171</sup> Response, para. 40.

<sup>172</sup> Reply, para. 9.

<sup>173</sup> Reply, paras 10-11.

<sup>174</sup> Reply, paras 13-17.

reflected in Rule 56(2) of the Rules.<sup>175</sup> The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.<sup>176</sup> However, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.<sup>177</sup>

93. Mr Krasniqi was arrested on 4 November 2020 and, as a result, he has been detained for slightly more than one year at the time of the present review of his detention. Accordingly, the Pre-Trial Judge will assess whether this period of time is reasonable in the specific circumstances relating to Mr Krasniqi.

94. First and foremost, the Pre-Trial Judge observes that the charges levelled against Mr Krasniqi are of the utmost gravity.<sup>178</sup> Specifically, Mr Krasniqi is charged with ten counts of serious international crimes, namely persecution on political and/or ethnic grounds, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons.<sup>179</sup> It is further alleged that Mr Krasniqi played a

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<sup>175</sup> KSC-BC-2020-07, IA001/F00005, Court of Appeals, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

<sup>176</sup> Similarly KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 69.

<sup>177</sup> ECtHR, *Buzadji v. the Republic of Moldova [GC]*, para. 90.

<sup>178</sup> See also ECtHR, *Shabani v. Switzerland*, no. 29044/06, [Judgment](#), 5 November 2009 (“*Shabani v. Switzerland*”), paras 65, 66, 69; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21, [Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalic](#), 25 September 1996, paras 20, 26; *Prosecutor v. Ademi*, IT-01-46-PT, [Order on Motion for Provisional Release](#), 20 February 2002 (“*Ademi Decision*”), para. 25; ICTR, *Prosecutor v. Ndayambaje*, ICTR-98-42-T, [Decision on the Defence Motion for the Provisional Release of the Accused](#), 21 October 2002 (“*Ndayambaje Decision*”), para. 23; *Prosecutor v. Ngirumpatse et al.*, ICTR-98-44-T, [Decision on the Motion by Ngirumpatse's Defence to Find the Accused's Detention Unlawful or, in the Alternative, to Order his Provisional Release](#), 18 August 2003 (“*Ngirumpatse Decision*”), para. 25.

<sup>179</sup> Confirmed Indictment, para. 173.

significant role in these crimes.<sup>180</sup> As such, he could be sentenced to a lengthy sentence, including life-long imprisonment, in the event of a conviction.

95. It further follows that the proceedings against Mr Krasniqi are complex.<sup>181</sup> The purported crimes extended over a lengthy period of time (from at least March 1998 through September 1999), covered a significant geographical area (numerous locations throughout Kosovo and different districts in northern Albania) and involved scores of victims.<sup>182</sup> Furthermore, the SPO preliminarily indicated that it intends to rely upon a significant number of witnesses,<sup>183</sup> [REDACTED].

96. Furthermore, the Pre-Trial Judge considers that it is highly significant that, as established, the risks that Mr Krasniqi, if released, will obstruct the progress of SC proceedings or commit further crimes continue to exist, and that these risks cannot be sufficiently mitigated by means of less restrictive measures.

97. In addition, as to the conduct of the Parties,<sup>184</sup> the Pre-Trial Judge observes that, following the Second Detention Decision, substantial procedural steps have been completed with a view to transmitting the case to trial in the future. In more specific terms, several decisions on requests for protective measures have been adopted,<sup>185</sup> the Defence's preliminary motions have been adjudicated,<sup>186</sup> the date for the SPO's Pre-Trial Brief has been set to 17 December 2021 and for its Rule 109(c) chart to 28 January 2022,<sup>187</sup> the SPO shall complete its disclosure under

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<sup>180</sup> Confirmed Indictment, paras 11, 32, 39, 40-42, 47, 51, 53-55, 172.

<sup>181</sup> See also ECtHR, *Shabani v. Switzerland*, paras 65, 69; ICTY, *Ademi Decision*, para. 26; ICTR, *Ndayambaje Decision*, para. 23; *Ngirumpatse Decision*, para. 25.

<sup>182</sup> Confirmed Indictment, paras 16, 32, 57-171, schedules A-C.

<sup>183</sup> KSC-BC-2020-06, F00542, Specialist Prosecutor, *Prosecution Submission of Preliminary Witness List*, 22 October 2021, public ("SPO Preliminary Witness List"), with strictly confidential and *ex parte* Annex 1 and confidential redacted Annex 2.

<sup>184</sup> See also ECtHR, *Shabani v. Switzerland*, paras 67-68.

<sup>185</sup> See footnote 78 above.

<sup>186</sup> KSC-BC-2020-06, F00412, Pre-Trial Judge, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 22 July 2021, public; F00413/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, public.

<sup>187</sup> 29 October 2021 Transcript, p. 752, line 20 – p. 753, line 5.

Rule 102(1)(b) of the Rules by 31 January 2022,<sup>188</sup> and the SPO has submitted a preliminary list of witnesses, which will also facilitate any investigations by the Defence.<sup>189</sup> With regard to the delays and the SPO's representations of the projected time limits highlighted by the Defence, the Pre-Trial Judge recalls that the relevant time limits have been extended upon good cause being demonstrated. In any event, the Pre-Trial Judge considers that, for the purposes of assessing the proportionality of Mr Krasniqi's detention, the actual length of time spent in pre-trial detention must be assessed as opposed to any estimates by the SPO that proved to be inaccurate. This is especially so considering that, notwithstanding the delays regarding particular time limits, progress continues to be made towards completing the pre-trial phase in the foreseeable future.

98. [REDACTED].

99. In conclusion, the Pre-Trial Judge finds that, in the specific circumstances of the present case, the period that Mr Krasniqi has spent in pre-trial detention, which slightly exceeds one year, is not unreasonable given: (i) the extreme gravity of the crimes with which Mr Krasniqi is charged and his allegedly important role in the commission of these crimes; (ii) the possibility of a serious sentence in the event of a conviction; (iii) the complexity of the case against Mr Krasniqi; (iv) the continued existence of risks under Article 41(6)(b)(ii)-(iii) of the Law and the impossibility to sufficiently mitigate these risks by means of less restrictive measures; and (v) the progress achieved in the present proceedings notwithstanding the delays regarding particular time limits. Against this background, the Pre-Trial Judge finds that Mr Krasniqi's pre-trial detention is proportionate and that any discussion regarding its anticipated length remains purely speculative at the moment. In this context, the Pre-Trial Judge observes that, while no start date of the trial has been established at this point in time,

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<sup>188</sup> 29 October 2021 Transcript, p. 752, line 20 – p. 753, line 5, p. 753, line 6 – p. 754, line 4.

<sup>189</sup> SPO Preliminary Witness List.

Mr Krasniqi's detention shall be reviewed every two months or as soon as a change in circumstances arises pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules.<sup>190</sup> In these circumstances, the Pre-Trial Judge finds that, at the present stage, any discussion as to the expected total length of Mr Krasniqi's pre-trial detention remains premature and speculative.<sup>191</sup>

100. Lastly, the Pre-Trial Judge finds that, to the extent the Defence is arguing that an undue delay has been caused by the SPO within the meaning of the second sentence of Rule 56(2) of the Rules,<sup>192</sup> such an argument also fails given that, as mentioned, good cause has been demonstrated for delays regarding particular time limits and progress continues to be made towards completing the pre-trial proceedings in the foreseeable future.

## V. DISPOSITION

101. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **CONFIRMS** the Second Detention Decision;
- b) **ORDERS** Mr Krasniqi's continued detention;
- c) **ORDERS** Mr Krasniqi, if he so wishes, to file submissions on the next review of detention by no later than **Friday, 17 December 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- d) **ORDERS** the SPO, should Mr Krasniqi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Krasniqi's detention by no later than **Friday, 31 December 2021**,

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<sup>190</sup> Similarly, ECtHR, *Ereren v. Germany*, no. 67522/09, [Judgment](#), 6 November 2014, para. 64.

<sup>191</sup> Second Court of Appeals Decision, para. 43.

<sup>192</sup> Request para. 28; Reply, para. 13.

- and Mr Krasniqi, if he so wishes, to file his submissions by no later than **Monday, 10 January 2022**; and
- e) **ORDERS** the Defence, the SPO and the Registry to submit public redacted versions of, as the case may be, the Request, Reply, SPO Observations, Defence Observations and Registry Submissions by no later than **Monday, 6 December 2021**, or to indicate that the current classification of any of these documents must be maintained.



**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Friday, 26 November 2021  
At The Hague, the Netherlands.